

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN**

MARK D. CHAPMAN, *et al.*,

Plaintiffs,

v.

GENERAL MOTORS LLC,

Defendant.

Case No. 2:19-cv-12333-TGB-DRG

Hon. Terrence G. Berg  
Magistrate Judge David R. Grand

**JOINT MOTION FOR AN ORDER AUTHORIZING  
GENERAL MOTORS TO FILE MOTION TO EXCLUDE PLAINTIFFS'  
EXPERT EDWARD M. STOCKTON IN PARTIALLY REDACTED FORM  
AND TO FILE CERTAIN EXHIBITS UNDER SEAL**

**STATEMENT OF THE ISSUE PRESENTED**

Should GM be granted leave to file in partially redacted form its Motion to Exclude Plaintiffs' Expert Edward M. Stockton because GM maintains that the information to be redacted reflects information that this Court previously ordered to be sealed and redacted?

Plaintiffs say: Yes.

GM says: Yes.

**CONTROLLING OR MOST APPROPRIATE AUTHORITIES**

Fed. R. Civ. P. 5.2(d)

Fed. R. Civ. P. 26(c)(1)

E.D. Mich. Local Rule 5.3(b)

## **INTRODUCTION**

The parties jointly seek an order to redact two limited categories of information from General Motors LLC's Motion to Exclude Opinions and Testimony of Plaintiffs' Expert Edward M. Stockton.

First, the parties seek to redact from the Motion to Exclude certain information that was previously redacted from Plaintiffs' Motion for Class Certification and certain sealed exhibits attached to that motion, including Mr. Stockton's expert report (ECF No.112-22), which was sealed by the Court (April 20, 2022 Text Order).

Second, GM seeks to redact limited portions of Mr. Stockton's April 12, 2022 Supplemental Report, which contain information derived from certain documents that GM has designated as 'CONFIDENTIAL' or "HIGHLY CONFIDENTIAL" pursuant to the Protective Order entered in this case. *See* ECF No. 44.

This Court previously granted the parties' Joint Motion for an Order authorizing plaintiffs to file their Motion for Class Certification and certain accompanying exhibits—including Mr. Stockton's expert report—under seal on similar grounds. *See* April 20, 2022 Text Order granting Joint Motion to Seal; *see also* ECF No. 111, Joint Motion to Extend Briefing Schedule.

GM maintains that the information and referenced documents that are the subject of this motion reflect information that has already been sealed or redacted pursuant to this Court's April 20, 2022 Order, or that reflects confidential and

proprietary business information and trade secrets, including warranty and repair data, and operating and financial information about GM-authorized dealerships. *See* Exhibit A, Declaration of April N. Ross, May 6, 2022. GM further maintains that this information is entitled to protection under federal law.

Plaintiffs do not challenge the sealing of the documents identified herein at this time to facilitate the filing of GM's Motion to Exclude. However, pursuant to Paragraph (I)(4)(3)(b) of the governing Protective Order, plaintiffs "do[] not waive [their] right to challenge a Confidential or Highly Confidential designation by electing not to raise a challenge promptly after the original designation is disclosed and may challenge a designation at such time as the Receiving Party deems appropriate." ECF No. 44 at 7, PageID.4814-4815. Plaintiffs take no position at this time as to whether the documents should remain sealed indefinitely. Plaintiffs join in the motion to seal, but reserve the right to challenge the propriety of keeping the documents and testimony at issue under seal.

GM proposes to file an unredacted version of it's the Motion to Exclude and associated exhibits under seal, wherein the yellow highlighted portions reflect content sought to be redacted.

### **GM'S ARGUMENT**

Local Rule 5.3(b)(3)(A) permits a party seeking to file an item under seal to file and serve a motion setting forth the authority for sealing or redacting and the

reasons sealing or redacting is appropriate. The rule provides that the moving party provide (i) an index of documents which are proposed for sealing and, as to each document, whether any other party objects; (ii) a description of any non-party or third-party privacy interests that may be affected if the documents or portions thereof to be sealed were publicly disclosed on the court record; (iii) whether the proposed sealed material was designated as “confidential” under a protective order and by whom; (iv) for each proposed sealed exhibit or document, a detailed analysis, with supporting evidence and legal citations, demonstrating that the request to seal satisfies controlling legal authority; (v) a redacted version of the document(s) to be sealed, filed as an exhibit to the motion, unless the proponent of filing is seeking to file the entire document under seal, in which case a blank sheet shall be filed as an exhibit; and (vi) an unredacted version, filed as a sealed exhibit, of the document that is sought to be filed under seal. E.D. Mich. L.R. 5.3(b)(3)(A).

**A. Index of Confidential Materials at Issue**

GM seeks to redact limited information from the Motion to Exclude Opinions and Testimony of Plaintiffs’ Expert Edward M. Stockton. Most of the redacted information was previously redacted from Plaintiff’s Motion for Class Certification and exhibits and filed under seal pursuant to this Court’s April 12, 2022 Order. In addition, certain data in Mr. Stockton’s April 12, 2022 Supplemental Expert Report was derived from the following materials, which GM designated as “confidential”

under the protective order by GM. *See* ECF No. 44. As indicated below, no party objects to these proposed redactions. *See* E.D. Mich. L.R. 5.3(b)(3)(A)(i) and (iii).

	<b>Description of Confidential Materials Disclosed In Stockton Supplemental Report</b>	<b>Objections from Parties</b>	<b>Designated Confidential or Highly Confidential</b>
1.	GM_CP4_000224548: non-public competitively-sensitive confidential GM warranty and repair data.	None	Yes
2.	GM_CP4_000224902: non-public competitively-sensitive confidential GM warranty and repair data.	None	Yes
3.	GM_CP4_000224543: non-public competitively-sensitive confidential operating and financial information about GM-authorized dealerships.	None	Yes
4.	GM_CP4_000224899: non-public competitively-sensitive confidential operating and financial information about GM-authorized dealerships.	None	Yes

## **B. Redacted and Unredacted Copies**

GM seeks to file its Motion to Exclude partially under seal, with quotations from or descriptions of previously sealed documents and the “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” documents listed above redacted. GM will file an unredacted version of its Motion to Exclude and accompanying exhibits under seal, wherein the highlighted portions reflect the content GM seeks to seal.

### **C. Controlling Legal Authority Supports Filing These Materials Under Seal**

A court has supervisory powers over its records and files to seal documents under appropriate circumstances. *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978). In the Sixth Circuit, “[m]otions to seal have been granted as to...information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it or to prevent dissemination of business information that might harm a litigant’s competitive standing.” *Shane Grp., Inc. v. Blue Cross Blue Shield of Mich.*, 2018 WL 1811471, at \*3 (E.D. Mich. Apr. 17, 2018).

Here, the proposed sealing is as narrow as possible without disclosing the contents of the document at issue. As noted above, the information contained in the designated materials reflects sensitive internal GM business information, practices and procedures taking the form of non-public warranty and dealership financial data, and is intended to be kept confidential. Courts in this district have granted motions to file similarly confidential competitively-sensitive information where, as here, “the materials are confidential, are not judicial documents, and that the presumption in favor of public access is overcome because the references to confidential and/or proprietary information would inflict competitive or financial harm. *Counts v. Gen. Motors, LLC*, 2021 WL 4241014, at \*2 (E.D. Mich. Mar. 15, 2021); *Ford Motor Co.*



*v. InterMotive, Inc.*, 2020 WL 2781827, at \*1 (E.D. Mich. May 29, 2020) (granting motion to seal “exhibits involve trade secrets not readily available to the public and regarding which the public's interest is outweighed.”).

### **CONCLUSION**

For the foregoing reasons, the parties respectfully request that this Court enter a text-only order authorizing GM to file in partially redacted form its Motion to Exclude Opinions and Testimony of Plaintiffs’ Expert Edward M. Stockton, and authorizing GM to file exhibits sealed and redacted that quote and reflect information from GM’s “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” documents.

Dated: May 6, 2022

Respectfully submitted,

/s/ April N. Ross

Kathleen Taylor Sooy

April N. Ross

Rachel P. Raphael

Charlotte E. Gillingham

CROWELL & MORING LLP

1001 Pennsylvania Avenue NW

Washington, DC 20004

Telephone: 202-624-2500

Facsimile: 202-628-5611

ksooy@crowell.com

aross@crowell.com

rraphael@crowell.com

cgillingham@crowell.com

*Counsel for General Motors LLC*

Steve W. Berman  
Jerrod C. Patterson  
HAGENS BERMAN SOBOL SHAPIRO LLP  
1301 Second Avenue, Suite 2000  
Seattle, WA 98101  
Telephone: (206) 623-7292  
Facsimile: (206) 623-0594  
steve@hbsslaw.com  
jerrodp@hbsslaw.com

Robert C. Hilliard  
Lauren Akers  
Bonnie Rickert  
HILLIARD MARTINEZ GONZALES LLP  
719 S. Shoreline Blvd.  
Corpus Christi, TX 78401  
Telephone: (361) 882-1612  
bobh@hmglawfirm.com  
lakers@hmglawfirm.com  
brickert@hmglawfirm.com

E. Powell Miller (P39487)  
Sharon S. Almonrode (P33938)  
Dennis A. Lienhardt, Jr. (P81118)  
THE MILLER LAW FIRM, P.C.  
950 W. University Drive, Suite 300  
Rochester, MI 48307  
Telephone: (248) 841-2200  
Facsimile (248) 652-2852  
epm@millerlawpc.com  
ssa@millerlawpc.com  
dal@millerlawpc.com

Russell D. Paul  
Jeffrey L. Osterwise  
Amey J. Park  
Abigail J. Gertner  
BERGER MONTAGUE PC  
1818 Market Street Suite 3600  
Philadelphia, PA 19103  
Telephone: (215) 875-3000  
rpaul@bm.net  
josterwise@bm.net  
apark@bm.net  
agertner@bm.net

Sidney D. Torres, III  
Roberta L. Burns  
Beau F. Camel  
Valerie L. Rodrigue  
LAW OFFICES OF SIDNEY D. TORRES, III,  
A PROFESSIONAL LAW CORPORATION  
8301 West Judge Perez Drive, Suite 303  
Chalmette, LA 70043  
Telephone: (504) 271-8422  
Facsimile: (504) 271-1961  
storres@torres-law.com  
rburns@torres-law.com  
bcamel@torres-law.com  
vrodrigue@torres-law.com

Eric H. Gibbs  
David Stein  
Steven Lopez  
GIBBS LAW GROUP LLP  
505 14th Street, Suite 1110  
Oakland, CA 94612  
ehg@classlawgroup.com  
sal@classlawgroup.com

*Attorneys for Plaintiffs and the Classes*

**CERTIFICATE OF SERVICE**

I hereby certify that on May 6, 2022, I electronically filed the foregoing document with the Court via CM/ECF, which will automatically send notice and a copy of same to counsel of record via electronic mail.

By: /s/ April N. Ross  
April N. Ross